

FILED FEBRUARY 19, 2009

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 08-PM-14265-RAH
)	
NUJYA A. STRAWDER)	ORDER GRANTING MOTION TO
)	REVOKE PROBATION
Member No. 112402)	
)	
<u>A Member of the State Bar.</u>)	

INTRODUCTION

The Office of Probation (OP), represented by Terrie Goldade, filed a motion pursuant to Business and Professions Code sections 6093, subdivision (b) and 6093, subdivision (c)¹ and rules 560 et seq. of the Rules Proc. of State Bar² to revoke the probation of respondent Nujya A. Strawder. Respondent represented herself in this proceeding.

For the reasons stated below, the court finds by a preponderance of the evidence that respondent wilfully failed to comply with the terms of her probation. (Section 6093, subd. (c).) As a result, the court grants OP's motion to revoke her probation and its request to involuntarily enroll her as an inactive member of the State Bar pursuant to section 6007, subdivision (d). The court recommends that respondent's probation be revoked, that the previously-ordered stay be lifted and that she be actually suspended from the practice of law for three years and until she complies with standard 1.4(c)(ii), Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct.³

¹Future references to section are to this source.

²Future references to rule are to this source.

³ Future references to standard are to this source.

FINDINGS OF FACT

Jurisdiction

Respondent was admitted to the practice of law in California on December 14, 1983, and has been a member of the State Bar at all times since.

Probation Violations

On December 22, 2004, the State Bar Court filed an order approving the stipulation of the parties in State Bar Court case no. 04-O-11930 recommending discipline consisting of stayed suspension for three years and until respondent complied with standard 1.4(c)(ii) and five years' probation on conditions including actual suspension for one year and until she complied with standard 1.4(c)(ii), among other things. A copy of the stipulation and the State Bar Court's order approving same were properly served upon respondent on that same date at her State Bar membership records address by first-class mail, postage prepaid.

On April 28, 2005, the California Supreme Court filed an order, S131366, accepting the State Bar Court's discipline recommendation and ordering respondent to comply with the conditions of probation recommended. The Supreme Court order became effective on May 28, 2005, thirty days after it was entered. (Rule 9.18(a), California Rules of Court.) It was properly served on respondent.⁴

Respondent was ordered to comply with the following conditions of probation:

(a) During the period of probation, submitting a written report to the OP on January 10, April 10, July 10 and October 10 of each year or part thereof during which the probation is in effect stating under penalty of perjury that she has complied with all provisions of the State Bar Act and Rules of Professional Conduct during said period (quarterly report).

⁴Although no proof was offered that the Clerk of the Supreme Court served the Supreme Court's order upon respondent, rule 8.532(a) of the California Rules of Court requires clerks of reviewing courts to immediately transmit a copy of all decisions of those courts to the parties upon filing. Moreover, it is presumed pursuant to Evidence Code section 664 that official duties have been regularly performed. (*In Re Linda D.* (1970) 3 Cal.App.3d 567, 571.) Therefore, in the absence of evidence to the contrary, this court finds that the Clerk of the Supreme Court performed his or her duty and transmitted a copy of the Supreme Court's order to respondent immediately after its filing.

Respondent did not comply with the probation condition because she submitted the following quarterly reports late:

<u>Date Due</u>	<u>Date Filed</u>
10/10/05	10/11/05
1/10/06	1/11/06
4/10/06	11/22/06
7/10/06	7/13/06
1/10/08	7/21/08
4/10/08	7/21/08
7/10/08	7/11/08

(b) As a condition of probation, respondent was ordered to make restitution to the Estate of Shirley Shine and the Client Security Fund by making minimum payments of \$100 per month beginning on May 28, 2006, one year after the effective date of the discipline. By May 28, 2007, respondent was to make minimum monthly payments of \$250. Payments were due on or before the fifteen day of the month. Respondent also was ordered to provide evidence of the payments with each quarterly report.

Respondent has not complied with the restitution orders in that she did not make the required payments as follows:

<u>Amount Due</u>	<u>Amount Paid</u>	<u>Date Due</u>	<u>Date Paid</u>
\$100		6/15/06	
\$100		7/15/06	
\$100		8/15/06	
\$100		9/15/06	
\$100		10/15/06	
\$100		11/15/06	
\$100		12/15/06	
\$100		1/15/07	
\$100	\$125	2/15/07	2/23/07
\$100		3/15/07	
\$100		4/15/07	
\$100		5/15/07	

On June 4, 2007, the State Bar Court filed an order modifying respondent's restitution

obligation. In relevant part, commencing December 1, 2007, respondent was ordered to pay \$250 per month for the following 12 months, ending November 1, 2008 and to provide proof of receipt of payment to the OP within 30 days of each payment.

On September 4, 2008, the State Bar Court again filed an order modifying respondent's restitution obligation. Respondent was ordered to pay the \$250 June 2008 payment by July 10, 2008. The April and May 2008 payments of \$250 each were payable by July 21, 2008. The January, February and March 2008 payments of \$250 each were due by August 18, 2008. All other payments were to be made as previously ordered.

Respondent did not comply with the revised restitution orders as follows:

<u>Amount Due</u>	<u>Amount Paid</u>	<u>Date Due</u>	<u>Date Paid</u>
\$250	\$250	12/1/07	12/4/07
\$250		1/1/08, 8/18/08	
\$250		2/1/08, 8/18/08	
\$250		3/1/08, 8/18/08	
\$250		4/1/08, 7/21/08	
\$250		5/1/08, 7/21/08	
\$250		6/1/08, 7/10/08	
\$250	\$250	7/1/08	7/10/08
\$250	\$250	8/1/08	7/21/08
\$250		9/1/08	
\$250		10/1/08	
\$250		11/1/08	

Respondent never provided proof of her restitution payments made on February 23, 2007, or July 10 or 21, 2008. The proof that respondent provided as to the December 4, 2007 payment did not contain legible information regarding the date or amount of payment.

On June 10, 2005, the OP wrote a letter to respondent, properly sent to her at her official address, reminding her of certain terms and conditions of her suspension and probation imposed pursuant to the Supreme Court's order and enclosing, among other things, copies of the Supreme Court's order, the probation conditions portion of the stipulation, instruction sheets or forms to use in submitting quarterly reports and proof of restitution.

The OP has been in contact with respondent during all relevant times regarding her missing, late or defective quarterly reports and restitution.

Respondent did not comply with the conditions of probation as set forth above.

CONCLUSIONS OF LAW

Pursuant to section 6093, subdivisions (b) and (c) and rule 561, the court concludes that OP has demonstrated by a preponderance of the evidence that respondent wilfully violated the conditions of probation regarding quarterly reports and restitution as ordered by the Supreme Court in S131366, more fully set forth above.

AGGRAVATING CIRCUMSTANCES

In aggravation, respondent has three prior records of discipline. (Std. 1.2(b)(i).) In S131366, respondent and the State Bar stipulated to culpability for a violation of section 6068, subdivision (k) for noncompliance with probation conditions ordered in Supreme Court matter S064918 (93-O-19007; 95-O-140851 (Cons.)). Respondent did not make nine restitution payments due between July 21, 2003 and March 21, 2004 and not providing proof of said payments to the OP. Two prior disciplinary records were considered in aggravation. Severe financial stress was considered in mitigation.

In S064918, filed June 21, 2001, respondent was actually suspended for 60 days, among other things, for violating probation conditions, namely untimely filing of three quarterly reports and not attending Ethics School or Client Trust Accounting School as previously ordered. One prior disciplinary record was considered in aggravation. Mitigating factors included family and emotional problems, severe financial stress and candor and cooperation.

In S064918, filed December 17, 1997, discipline was imposed consisting of four years' stayed suspension and four years' probation on conditions including actual suspension for two years and until she complied with standard 1.4(c)(ii). In 10 client matters, culpability was found for violations of sections 6103 (four counts); 6106 (three counts); 6068, subdivision (m) (two counts and 6068, subdivision (b) as well as Rules of Professional Conduct 3-110(A) (six counts); 4-100(A) and (B)(3) (one count of each) and 4-200(A) (two counts). In aggravation, multiple

acts of misconduct and client harm were considered. Mitigating factors included no prior discipline, emotional and physical difficulties and candor and cooperation.

Respondent engaged in multiple acts of misconduct. (Std. 1.2(b)(ii).)

Respondent significantly harmed the administration of justice as her failure to comply with the conditions of her probation made it more much difficult for the State Bar to appropriately monitor her in seeking to insure the protection of the public and the courts. (Std. 1.2(b)(iv).)

Further, respondent's failure to comply with the probation conditions despite the OP's efforts to gain her compliance demonstrates indifference toward rectification of or atonement for the consequences of her misconduct. (Std. 1.2(b)(v).)

MITIGATING CIRCUMSTANCES

No mitigating factors are found.

DISCUSSION

Section 6093 authorizes the revocation of probation for a violation of a probation condition, and standard 1.7 requires that the court recommend a greater discipline in this matter than that imposed in the underlying disciplinary proceeding. However, any actual suspension recommended cannot exceed the period of stayed suspension imposed in the underlying proceeding. (Rule 562.) The extent of the discipline to recommend is dependent, in part, on the seriousness of the probation violation and respondent's recognition of her misconduct and her efforts to comply with the conditions. (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 540.)

The court agrees with the OP's request that respondent be actually suspended for the full amount of stayed suspension. Respondent was aware of the terms and conditions of her disciplinary probation, yet failed to comply with them despite the OP's efforts to gain her compliance. Moreover, this is her fourth disciplinary matter and third proceeding to address noncompliance with probation conditions. It does not appear to be productive to place respondent on probation again.

The court declines the OP's invitation to extend respondent's actual suspension until she has completed restitution as previously ordered. It appears that respondent has been unable to comply with the restitution order. In 2007 and 2008, she obtained orders from this court restructuring her restitution obligation. This and one prior disciplinary case resulted, in part, from noncompliance with the restitution provisions.

However, the payment of restitution is an important step towards rehabilitation. (*In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138, 152). As the Review Department of the State Bar Court noted in *In the Matter of Taggart* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 302:

"The Supreme Court has held that the 'significance of restitution is its probative value as an indicator of rehabilitation, not the repayment of the underlying indebtedness.' (*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1093.) Requiring restitution serves the rehabilitative and public protection goals of disciplinary probation by forcing attorneys to confront in concrete terms the consequences of the attorney's misconduct. (*Brookman v. State Bar* [(1988)] 46 Cal.3d at p. 1009; *In the Matter of Potack* [(Review Dept. 1991)] 1 Cal. State Bar Ct. Rptr. at p. 537.) Thus, a probationer's attitude toward the restitution is a significant factor to be weighed. (*Hippard v. State Bar*, supra, 49 Cal.3d at p. 1093.)"

(*In the Matter of Taggart*, supra, 4 Cal. State Bar Ct. Rptr. at p. 312.)

Accordingly, if, in the future, respondent seeks to have her actual suspension terminated in a proceeding pursuant to standard 1.4(c)(2), the court will consider her efforts in completing the restitution ordered in S131366 in assessing whether she has demonstrated rehabilitation.

The prior disciplinary order "provided [respondent] an opportunity to reform her conduct to the ethical strictures of the profession. Her culpability in [the matter] presently under consideration sadly indicates either her unwillingness or inability to do so." (*Arden v. State Bar* (1987) 43 Cal.3d 713, 728.) Accordingly, after considering the misconduct and the aggravating and mitigating circumstances, the court recommends, among other things, three years of actual suspension to continue until she complies with standard 1.4(c)(2).

DISCIPLINE RECOMMENDATION

The court recommends that the probation of respondent Nujya A. Strawder, previously ordered in Supreme Court case matter S131366 (State Bar Court case no. 04-O-11930), be

revoked; that the previous stay of execution of the suspension be lifted, and that respondent be actually suspended for three years and until she complies with standard 1.4(c)(ii), Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct.

It is not recommended that respondent be ordered to comply with rule 9.20(a) of the California Rules of Court. The court judicially notices its records pursuant to Evidence Code section 452, subdivision (d) which indicate that respondent filed a declaration pursuant to rule 955 of the California Rules of Court on August 5, 1997.⁵ She has not been entitled to practice law since August 1996.

It is not recommended that respondent be ordered to successfully complete State Bar Ethics School or to take and pass the Multistate Professional Responsibility Examination as she was ordered to do so in Supreme Court matter S131366 (State Bar Court case no. 04-O-11930).

COSTS

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

ORDER REGARDING INACTIVE ENROLLMENT

Respondent is involuntarily enrolled inactive pursuant to Business and Professions Code section 6007, subdivision (d). The requirements of section 6007, subdivision (d)(1) have been met: Respondent was subject to a stayed suspension, was found to have violated probation conditions, and it has been recommended that respondent be actually suspended due to said violations.

IT IS THEREFORE ORDERED that respondent Nujya A. Strawder, be involuntarily enrolled as an inactive member of the State Bar of California pursuant to Business and Professions Code section 6007, subdivision (d). This enrollment shall be effective three days following service of this order.

⁵Rule 9.20 of the California Rules of Court was known as rule 955 at that time.

IT IS ALSO ORDERED that her inactive enrollment be terminated as provided by Business and Professions Code section 6007, subdivision (d)(2).

IT IS RECOMMENDED that respondent's actual suspension in this matter commence as of the date of her inactive enrollment pursuant to this order. (Business and Professions Code section 6007, subdivision (d)(3).)

Dated: February 19, 2009

RICHARD A. HONN
Judge of the State Bar Court